

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**AMERICAN HOME MORTGAGE §
SERVICING, INC., on its own behalf and §
as Servicer for American Home Mortgage §
Investment Trust 2005-4A, American §
Home Mortgage Investment Trust 2006-1, §
American Home Mortgage Investment §
Trust 2006-3, American Home Mortgage §
Investment Trust 2007-1, American Home §
Mortgage Asset Trust 2006-1, American §
Home Mortgage Asset Trust 2006-3, §
American Home Mortgage Asset Trust §
2006-4, American Home Mortgage Asset §
Trust 2006-5, and American Home §
Mortgage Asset Trust 2006-6, §
§
Plaintiff §
v. §
§
TRIAD GUARANTY INSURANCE CORP., §
§
Defendant. §**

Civil Action No. 3:09-cv-2363-M

MOTION TO STAY OR TRANSFER

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Defendant Triad Guaranty Insurance Corp. (“Defendant” or “Triad”) files this Motion to Stay or Transfer and respectfully shows the Court as follows:

PROCEDURAL BACKGROUND

1. On or about September 4, 2009, Triad sued American Home Mortgage Investment Corp., American Home Mortgage Corp., AHM SV, Inc. (f/k/a American Home Mortgage Servicing, Inc.), and all others similarly situated as owners of mortgage loan insurance issued by Triad Guaranty Corp to American Home Mortgage, in the United States Bankruptcy Court for the District of

Delaware. A true copy of the complaint in that action appears in the Appendix to this motion at pages 1-25. Triad's action in the Delaware Bankruptcy Court will hereinafter be referred to as the "Delaware case."

2. In the Delaware case, Triad seeks among, other things, rescission of insurance policies and related declaratory relief arising from American Home Mortgage's (hereinafter "AHM") failure to follow insurance underwriting guidelines approved by Triad, resulting in a large percentage of loans that did not qualify for Triad's mortgage insurance.

3. On December 11, 2009, Plaintiff American Home Mortgage Servicing, Inc., hereinafter "AHMSI" filed this action. In this action, AHMSI seeks a declaratory judgment and damages against Triad arising from alleged claims asserted under Triad policies 43-0216-0020 and 43-0216-0026 (hereinafter the "Master Policies"). Complaint, ¶10. In this action, AHMSI raises claims based on fifteen (15) loans related to the Master Policies identified in paragraph 10 of the Complaint. Complaint, ¶¶31-80. AHMSI asserts that Triad breached the two Master Policies, that Triad committed breach of an alleged duty of good faith and fair dealing under the two Master Policies, and that AHMSI is entitled to a declaratory judgment regarding Triad's duties under the two Master Policies.

4. The Master Policies are specifically listed in the complaint in the Delaware case as policies that should be rescinded due to AHM's systematic failure to abide by underwriting guidelines under the policies. See Appendix, page 24.

5. If Triad is granted rescission of the Master Policies or the declaratory relief that it seeks in the Delaware case, there will be no further case or controversy between AHMSI and Triad in this action, because the Master Policies underlying AHMSI's claims in this action will be

rescinded and void *ab initio*. There would then be no contract on which AHMSI could base the claims brought before this Court.

6. The Delaware case was the first filed case. The threshold issue of the validity of the Master Policies is pending in the Delaware case and must be decided by the Delaware court. The issues in the Delaware case substantially overlap the issues before this Court. Therefore, Triad moves that the action before this Court be stayed pending resolution of the Delaware case.

7. In the alternative, should the Court determine that this case not be stayed, this case should be transferred to the Bankruptcy Court for the District of Delaware for determination pursuant to the first to file rule.

8. Triad's Memorandum in Support of this Motion is filed contemporaneously herewith.

WHEREFORE, Defendant Triad Guaranty Insurance Corp. respectfully requests the Court to enter an Order staying this case pending determination of the issues in the Delaware case, or in the alternative, transfer this case to the Bankruptcy Court for the District of Delaware, together with such other and further relief to which Defendant Triad may demonstrate itself justly entitled.

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

I hereby certify that on January 29, and again on February 2, 2010, I spoke with Michael Kieval, counsel for the Plaintiff, in a good faith effort to seek his client's position on this Motion To Stay or Transfer. Mr. Kieval stated that he did not have his client's agreement to the relief requested in this Motion.

Vic H. Henry
Vic H. Henry

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion has been served via the Court's ECF filing/service system on Plaintiff's counsel, Troy W. Garriss, Weiner, Brodsky, Sidman Kider, P.C., 2904 Corporate Circle, Suite 128, Flower Mound, TX 75028, on this the 2nd day of February, 2010.

Vic H. Henry
Vic H. Henry